

Judge: Christopher M. Alston
Chapter: 13
Hearing Date: December 13, 2018
Hearing Time: 9:30 a.m.
Hearing Location:
Judge Alston's Courtroom
700 Stewart St #7206
Seattle, WA 98101
Response Date: December 06, 2018

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

JACK CARLTON CRAMER, JR,

Debtor(s).

IN CHAPTER 13 PROCEEDING
NO. 18-13383-CMA

MOTION TO CONVERT CHAPTER 13
CASE TO A CHAPTER 7 CASE

Jason Wilson-Aguilar, Chapter 13 Trustee, moves to convert the debtor's Chapter 13 case to a Chapter 7 case.

The debtor's case was filed on August 29, 2018 (ECF No. 1). The debtor disclosed an ownership interest in real property located at 15605-62rd Avenue NE, Kenmore, WA 98028 (ECF No. 10, Schedule A/B). Based on the debtor's scheduled, non-exempt assets (ECF No. 10), the debtor's plan (ECF No. 12) should provide for a liquidation value of \$362,850.00 in Section IX. Based on this liquidation value, it appears that there is sufficient equity in the debtor's real property to pay the debtor's unsecured creditors in full.

The Court may convert this case to a Chapter 7 case or dismiss this case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1307(c). This case should be converted to Chapter 7 so that a Chapter 7 trustee can review the case and promptly liquidate any non-exempt assets for the benefit of creditors. Creditors should not be prejudiced by the delay that would result if this case remains a Chapter 13 case.

The debtor also has a number of confirmation issues that need to be addressed. The Trustee has addressed the below confirmation issues in the Trustee's Objection to Confirmation (ECF No. 22).

MOTION TO CONVERT - 1

Chapter 13 Trustee
600 University St. #1300
Seattle, WA 98101

1 1) The debtor is delinquent on plan payments in the amount of \$6,000.00. This
2 delinquency figure includes the October 2018 plan payment, which was due by October 29, 2018.
3 Although a wage directive has been issued to the debtor's employer, the debtor is responsible for
4 making direct payments to the Trustee until the wage deduction takes effect. To date, the Trustee
5 has not received a plan payment from the debtor.

6 2) According to the Internal Revenue Service (ECF Claim No. 5), the debtor has failed
7 to file tax returns for the 2014, 2015, 2016 and 2017 tax years. The debtor needs to file these
8 returns so that the IRS can amend its claim, and in order for the Trustee to more accurately
9 determine feasibility. 11 U.S.C. §§ 1307, 1308.

10 3) The debtor has failed to provide the Trustee with the documentation required by
11 Local Bankruptcy Rule 4002-1 and 11 U.S.C. § 521. The debtor needs to provide these required
12 documents to the Trustee at least seven days prior to the continued 341 meeting of creditors, which
13 is scheduled for November 19, 2018 at 8:30 a.m.

14 4) The debtor needs to appear at the continued 341 meeting of creditors, scheduled for
15 November 19, 2018 at 8:30 a.m.

16 5) It does not appear that the debtor's plan (ECF No. 12) was served on creditors. The
17 debtor needs to note an amended plan for hearing, and file a proof of service with the Court
18 verifying that creditors received notice of the debtor's amended plan.

19 6) The debtor's plan (ECF No. 12) is not feasible.

20 7) Section I.C. of the plan provides that the plan avoids a security interest or lien, but
21 that is incorrect. Moreover, even if the debtor intended to avoid a security interest or lien through
22 the plan confirmation process, the debtor did not comply with Local Bankruptcy Rule 3015-1(g)
23 (Request to Avoid a Judicial Lien or Security Interest in a Plan under 11 U.S.C. § 522(f)). The
24 debtor needs to amend Section I.C. of the plan to provide that the plan does not avoid a security
25 interest or lien.

26 8) The debtor needs to amend the plan to provide for payment of the secured judgment
27 liens through the plan (i.e. the Trustee shall make the payments on these liens from the debtor's
28 plan payments). Local Bankr. R. 3015-1(j).

MOTION TO CONVERT - 2

Chapter 13 Trustee
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1 9) The debtor needs to amend the plan to provide for the IRS secured claim of
2 \$55,514.39 within Section IV.C.1., including 5% interest.

3 10) The debtor needs to amend the plan to provide for payment of the property taxes
4 (both ongoing and arrears) through the plan (i.e. the Trustee shall make the payments on the
5 property taxes from the debtor's plan payments). Local Bankr. R. 3015-1(j). Based on the property
6 tax statement obtained from King County, the debtor is delinquent on the property taxes in the
7 amount of approximately \$22,148.09. The debtor needs to amend the plan to provide for the
8 ongoing property taxes and property tax arrears, including 12% interest, in Section IV.C.1.

9 11) The debtor needs to amend the plan to provide for payment of the financed 2007
10 Chevy Silverado through the plan (i.e. the Trustee shall make the vehicle payments from the
11 debtor's plan payments). Local Bankr. R. 3015-1(j).

12 12) The debtor's plan provides for the following language in Section III.E.: "I will
13 obtain a reverse mortgage within the next 60 days and pay off 100% of my debts." The debtor
14 needs to amend the plan to remove the language from Section III.E. Any nonstandard provisions
15 shall be included in Section X. Local Bankr. R. 3015-1(b). If the debtor adds any nonstandard
16 provisions to Section X., the debtor will also need to amend the plan, Section I.A., for accuracy.

17 13) The debtor's plan (ECF No. 12) is largely incomplete, and the debtor failed to
18 complete Sections IV.E. and IX. of the plan (among others). All appropriate blanks on the form
19 shall be completed. Local Bankr. R. 3015-1(b).

20 14) Based on the debtor's scheduled, nonexempt assets (ECF No. 10), the debtor needs
21 to amend the plan to provide for a liquidation value of \$362,850.00 in Section IX.

22 15) This liquidation value will exceed the debtor's scheduled, unsecured debt, so the
23 debtor will need to provide for the federal judgment interest rate of 2.46% in Section IX.
24 Unsecured claims are entitled to interest at the federal judgment rate when the bankruptcy estate
25 is solvent. *Onink v. Cardelucci* (In re Cardelucci), 285 F.3d 1231, 1234 (9th Cir. 2002).

26 16) The debtor needs to amend Schedule J to remove the property tax expense of
27 \$558.33/month and the vehicle payment of \$550.00/month, as these obligations will be paid
28 through the debtor's plan.

MOTION TO CONVERT - 3

Chapter 13 Trustee
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17) The debtor needs to amend Schedule A/B for accuracy regarding the value of the debtor's interest in the 15605 63rd Avenue property in Kenmore, as it appears that the value of the debtor's interest in this property is understated on Schedule A/B.

The Trustee reserves the right to assert additional bases for this motion, as the Trustee has not yet conducted the debtor's 341 meeting of creditors.

WHEREFORE, the Chapter 13 Trustee requests that the Court convert the debtor's Chapter 13 case to a Chapter 7 case and order the debtor to pay the conversion fee (if any).

Dated this 6th day of November, 2018

/s/ Anna M. Park, WSBA #42633 for
JASON WILSON-AGUILAR
Chapter 13 Trustee